

1 PAUL J. PASCUZZI, State Bar No. 148810
2 JASON E. RIOS, State Bar No. 190086
3 THOMAS R. PHINNEY, State Bar No. 159435
4 FELDERSTEIN FITZGERALD
5 WILLOUGHBY PASCUZZI & RIOS LLP
6 500 Capitol Mall, Suite 2250
7 Sacramento, CA 95814
8 Telephone: (916) 329-7400
9 Facsimile: (916) 329-7435
10 Email: ppascuzzi@ffwplaw.com
11 jrios@ffwplaw.com
12 tphinney@ffwplaw.com
13
14 ORI KATZ, State Bar No. 209561
15 ALAN H. MARTIN, State Bar No. 132301
16 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
17 A Limited Liability Partnership
18 Including Professional Corporations
19 Four Embarcadero Center, 17th Floor
20 San Francisco, California 94111-4109
21 Telephone: (415) 434-9100
22 Facsimile: (415) 434-3947
23 Email: okatz@sheppardmullin.com
24 amartin@sheppardmullin.com
25
26 Attorneys for The Roman Catholic Archbishop of
27 San Francisco

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

19 In re
20 THE ROMAN CATHOLIC ARCHBISHOP
21 OF SAN FRANCISCO,
22 Debtor and
Debtor in Possession.

Case No. 23-30564

Chapter 11

**DEBTOR'S MOTION TO EXTEND
DEADLINE TO ASSUME OR REJECT
UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY
PURSUANT TO SECTION 365(d)(4) OF
THE BANKRUPTCY CODE**

Date: December 14, 2023

Time: 1:30 p.m.

Location: via ZoomGov

Judge: Hon. Dennis Montali

28 | //

Case No. 23-30564

1 The Roman Catholic Archbishop of San Francisco, the debtor and debtor in possession (the
2 “RCASF” or the “Debtor”) hereby files this motion (the “Motion”) pursuant to section 365(d)(4)
3 of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order substantially in
4 the form attached hereto as **Exhibit A** (the “Proposed Order”) extending the time for the Debtor to
5 assume or reject unexpired leases of nonresidential real property (the “Unexpired Leases”).

6 In support of this Motion, the Debtors submit the *Declaration of Joseph J. Passarello* in
7 support of the Motion (the “Passarello Declaration”) filed contemporaneously herewith as well as
8 the *Declaration of Joseph J. Passarello in Support of Chapter 11 Petition and Debtor’s Emergency*
9 *Motions* [ECF 14] (“Passarello Background Decl.”), and the *Declaration of Paul E. Gaspari in*
10 *Support of Chapter 11 Petition and Debtor’s Emergency Motions* [ECF 15] (“Gaspari Decl.”) and
11 all exhibits filed in support thereof. The Debtor informed the Committee through counsel that this
12 Motion would be filed and the extension requested.

JURISDICTION AND VENUE

14 1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and
15 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtor consents to
16 the entry of a final judgment or order with respect to this Motion.

17 2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

GENERAL BACKGROUND AND RELIEF REQUESTED

19 3. On August 21, 2023 (the “Petition Date”), the Debtor commenced with the Court a
20 voluntary case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its
21 businesses and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108
22 of the Bankruptcy Code. No trustee or examiner has been appointed in the Bankruptcy Case. On
23 September 1, 2023, the Office of the United States Trustee for the Northern District of California
24 appointed a statutory committee of unsecured creditors (“Committee”) in this case pursuant to
25 section 1102 of the Bankruptcy Code [ECF 58].

26 4. The RCASF filed this Bankruptcy Case to reorganize its financial affairs pursuant
27 to a plan of reorganization that will, among other things, fairly, justly, and equitably compensate
28 survivors of sexual abuse by clergy or others associated with the RCASF and bring healing to

1 survivors, parishioners and others affected by past acts of sexual abuse. The RCASF requires the
2 Bankruptcy Court's protection and the protection of the bankruptcy laws to make fair and equitable
3 payment on all of the claims against it, including the claims by survivors of abuse, trade creditors,
4 and others, while continuing its ministries and support it offers to Catholic parishes and
5 communities.

6 5. By this Motion and pursuant to section 365(d)(4) of the Bankruptcy Code, the
7 Debtor seeks to extend the current deadline of December 19, 2023, to assume or reject unexpired
8 leases of nonresidential real property (the “Assumption/Rejection Deadline”) by ninety (90) days,
9 up to and including March 18, 2024.

I. FACTUAL GROUNDS

11 6. The Debtor is a party to multiple leases of nonresidential real property. The Debtor
12 is currently undertaking a comprehensive review of its Unexpired Leases to determine which ones
13 to assume and which to reject. The Debtor is party to at least 13 Unexpired Leases, most of which
14 the Debtor acts as lessor.

15 7. On September 21, 2023, the Debtor filed its Schedules [ECF 152] which identifies
16 the Unexpired Leases to which the Debtor may be a party, including but not limited to leases with
17 Chesterton Academy of San Francisco, Children's Council of San Francisco, Cruise LLC,
18 Daughters of Charity, JEH Enterprises, Inc., the Cemeteries, Seneca Family of Agencies, the
19 Archdiocese of San Francisco Parish and School Juridic Persons Real Property Support
20 Corporation, the Roman Catholic Seminary of San Francisco, and The Sleep Train, Inc./Mattress
21 Firm.

22 8. The Debtor is current on all monetary obligations due and owing under its
23 Unexpired Leases of nonresidential real property. The Debtor has the current financial resources to
24 continue to pay its bills as they come due and will continue to do so. Consequently, its continued
25 occupation of the premises leased by the Debtor will not damage its lessors.

26 9. Pursuant to section 365(d)(4) of the Bankruptcy Code, if the Unexpired Leases for
27 which the Debtor is the lessee are not assumed or rejected on or prior to the Assumption/Rejection
28 Deadline, such unexpired leases shall be deemed rejected unless the Debtor receives, pursuant to

1 section 365(d)(4)(B)(i) of the Bankruptcy Code, an extension of time within which it may assume
2 or reject the Unexpired Leases. In this case, there is sufficient cause to grant the Debtor's requested
3 extension of time within which it may assume or reject any Unexpired Leases. The Debtor has not
4 had sufficient opportunity to adequately assess the potential value of each of the Unexpired Leases
5 in the context of its restructuring efforts.

6 10. The Debtor is in the early stages of the case and working to build a foundation for a
7 plan of reorganization. It is actively taking steps to develop a plan of reorganization with its
8 constituents. Additional time is needed to fully evaluate the progress and dynamics of the case, and
9 the potential effect of assumption or rejection of the lease under the unique circumstances of this
10 case.

11 11. This Chapter 11 Case is large and complex. The Debtor's estate includes substantial
12 claims and assets to be administered. As detailed in the Passarello Background Decl., the
13 Archdiocese¹ includes 88 Parishes. The RCASF's fiscal 2023 operating budget includes
14 approximately \$55 million in revenues.

15 12. The Debtor has been working expeditiously to establish procedures for potential
16 abuse claimants to submit claims and develop a framework for the exchange of information with
17 the Committee that will enable the parties to move promptly to mediation. Moreover, the Debtor
18 has worked expeditiously with the Committee and other key stakeholders, including the Debtor's
19 insurers, to begin toward the path develop a consensual plan to emerge from chapter 11. However,
20 this case remains in the early stages and additional time is needed to explore potential opportunities
21 and evaluate how each lease may impact those opportunities. Accordingly, cause exists to extend
22 the Assumption/Rejection Deadline up to and including March 18, 2024.

II. LEGAL GROUNDS

24 Section 365 of the Bankruptcy Code governs the Debtor's ability to assume, assume and
25 assign, and reject unexpired leases and executory contracts. Section 365(d)(4)(A) of the Bankruptcy

²⁷ ²⁸ ¹ The term “Archdiocese” is used herein exclusively to refer to geographic territory under the jurisdiction of the RCASF, and the terms RCASF, or Debtor are used herein exclusively to refer to the secular legal embodiment of the Archdiocese.

1 Code provides that:

2 an unexpired lease of nonresidential real property under which the debtor is the lessee
3 shall be deemed rejected, and the trustee shall immediately surrender that
4 nonresidential real property to the lessor, if the trustee does not assume or reject the
unexpired lease by the earlier of-

5 (i) the date that is 120 days after the date of the order for relief; or
6 (ii) the date of the entry of an order confirming a plan.

7 11 U.S.C. § 365(d)(4)(A).

8 Section 365(d)(4)(B)(i) further provides that the “court may extend the period determined
9 under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of
10 the trustee or lessor for cause.” 11 U.S.C. § 365(d)(4)(B).

11 The term “cause,” as used in section 365(d)(4)(B), is not defined in the Bankruptcy Code,
12 nor does the Bankruptcy Code establish formal criteria for evaluating a request for an extension of
13 the initial 120-day period. The bankruptcy court is left a “great deal of discretion...to weigh all
14 relevant factors related to the requested extension.” *BC Brickyard Assocs. v. Ernst Home Ctr., Inc.*
15 (*In re Ernst Home Ctr., Inc.*), 221 B.R. 243, 253 (B.A.P. 9th Cir. 1998); *see also In re Victoria*
16 *Station, Inc.*, 88 B.R. 231 (9th Cir. BAP 1988, *aff’d* 875 F.2d 1380 (9th Cir. 1989))

17 Although the decision to extend a debtor’s time to assume or reject unexpired leases of
18 nonresidential property is generally within the sound discretion of the court, in determining whether
19 cause exists for an extension of the initial 120-day period, courts have relied on several factors,
20 including the following:

21 (1) whether the debtor was paying for its use of the property;
22 (2) whether the debtor’s continued occupation of the leased premises could damage
the lessor beyond the compensation available under the Bankruptcy Code;
23 (3) whether the lease is the debtor’s primary asset; and
24 (4) whether the debtor has had sufficient time to formulate a plan.

25
26 *See South St. Seaport Ltd. P’Ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761
27 (2d Cir. 1996); *In re Panaco, Inc.*, 2002 Bankr. LEXIS 2084, *12 (Bankr. S.D. Tex. Dec. 9, 2009);
28 *see also In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987) (considering, among

1 the aforementioned factors, the complexity of the case facing the debtor and the number of leases
2 the debtor must evaluate); *Legacy, Ltd. v. Channel Home Ctrs., Inc. (In re Channel Home Ctrs., Inc.)*, 989 F.2d 682, 689 (3d Cir. 1993), *superseded by statute*, the Bankruptcy Abuse Prevention
3 and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 404(a), 119 Stat. 23 (2005), *as*
4 *recognized in In re Jim Palmer Equip., Inc.*, 2008 Bankr. LEXIS 4096, *12 (Bankr. D. Mont. Nov.
5 25, 2008) (“it is permissible for a bankruptcy court to consider a particular debtor’s need for more
6 time in order to analyze leases in light of the plan it is formulating” (citing *In re Wedtech*, 72 B.R.
7 at 471–72)).

9 Some bankruptcy courts, including in the Ninth Circuit, have taken a more expansive
10 approach by weighing multiple factors in an effort to determine whether “cause” exists:

- 11 (1) whether the lease is the primary asset of debtor;
- 12 (2) whether the landlord has a reversionary interest in the building built by debtor on
13 landlord’s land;
- 14 (3) whether the debtor has had sufficient time to assess its financial situation and the
15 potential value of its assets in terms of formulating a plan;
- 16 (4) whether the lessor continues to receive the rent as required by the lease;
- 17 (5) whether the lessor will be damaged beyond the compensation available under the
18 Bankruptcy Code due to debtor’s continued occupation of the leased premises;
- 19 (6) whether the case is exceptionally complex and involves a large number of leases;
- 20 (7) whether the need exists for a judicial determination of whether the lease is disguised
21 as a security interest;
- 22 (8) whether the debtor has failed or is unable to formulate a plan when it has had
23 sufficient time to do so; and
- 24 (9) any other factors bearing on whether the debtor has had a reasonable amount of time
25 in which to decide whether to assume or reject the lease.

23 *See, e.g., In re Service Merchandise Co., Inc.*, 256 B.R. 744, 748 (Bankr. M.D. Tenn. 2000); *BC*
24 *Brickyard Assocs. v. Ernst Home Ctr., Inc. (In re Ernst Home Ctr., Inc.)*, 221 B.R. 243, 253 (B.A.P.
25 9th Cir. 1998).

26 Ultimately, whether to grant an extension of time rests within the sound discretion of the
27 bankruptcy court. *In re Burger Boys, Inc.*, (2nd Cir. 1996) 94 F.3d 755 at 760–61. “Nothing prevents
28 a bankruptcy court from granting an extension because a particular debtor needs additional time to

1 determine whether the assumption or rejection of particular leases is called for by the plan of
2 reorganization that it is attempting to develop.” *In re Channel Home Ctrs., Inc.*, 989 F.2d at 689;
3 see also *Coleman Oil Co. v. Circle K Corp. (In re Circle K Corp.)*, 127 F.3d 904 (9th Cir. 1997),
4 cert. denied, 522 U.S. 1148, 118 S. Ct. 1166 (1998) (noting that bankruptcy courts can grant a
5 debtor’s request for an extension).

6 Here, the Debtor submits that there are substantial grounds for the Court to extend the
7 deadline for assumption or rejection of the Unexpired Leases. The Debtor is current on its post-
8 petition rent obligations and has the resources to remain current, the Debtor's bankruptcy case is
9 large and complex, and the Debtor has worked expeditiously to move this case forward to
10 administer potential claims, engage in mediation, and develop a plan of reorganization. Denial of
11 the Motion would cause the Debtor to precipitously assume or reject Unexpired Leases without
12 adequate time to evaluate the benefit of those leases and would put the estate at risk.

13 WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested
14 herein and such other and further relief as the Court may deem just and proper.

15 Dated: November 16, 2023 FELDERSTEIN FITZGERALD WILLOUGHBY
PASCUZZI & RIOS LLP

By: /s/ Jason E. Rios
PAUL J. PASCUZZI
JASON E. RIOS
THOMAS R. PHINNEY

Attorneys for The Roman Catholic Archbishop of
San Francisco

22 | Dated: November 16, 2023 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: /s/ Ori Katz
ORI KATZ
ALAN H. MARTIN

Attorneys for The Roman Catholic Archbishop of
San Francisco

Exhibit A

[Proposed Order]

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re

Case No. 23-30564

THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO,

Chapter 11

Debtor and Debtor in Possession.

**[PROPOSED] ORDER GRANTING
DEBTOR'S MOTION TO EXTEND
DEADLINE TO ASSUME OR REJECT
UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY
PURSUANT TO SECTION 365(d)(4) OF
THE BANKRUPTCY CODE**

Date: December 14, 2023

Time: 1:30 p.m.

Location: via ZoomGov

Judge: Hon. Dennis Montali

Upon consideration of the motion (the “Motion”)² filed by the debtor and debtor in possession The Roman Catholic Archbishop of San Francisco, (“Debtor”) for entry of an order (this “Order”) pursuant to section 365(d)(4) of the Bankruptcy Code extending the time in which the Debtor may assume or reject unexpired leases of nonresidential real property filed by Debtor; and the Court having reviewed the Motion and having considered the record at the hearing held before this Court (the “Hearing”), if any; and having determined that the legal and factual bases set forth in the Motion and at the Hearing establish good cause for the relief granted herein;

IT IS THEREFORE ORDERED:

1. The Motion is GRANTED as set forth herein.
2. The time period within which the Debtor may assume or assign unexpired

² Capitalized terms not defined herein shall have the meanings given to them in the Motion.

1 nonresidential real property leases is extended for an additional 90 days, through and including
2 March 18, 2024, in accordance with section 365(d)(4) of the Bankruptcy Code.

3 3. The extension of time granted herein is without prejudice to the Debtor's rights to
4 seek further extensions of its time to assume or reject any unexpired nonresidential real estate lease
5 as provided in section 365(d)(4) of the Bankruptcy Code.

6 4. The Debtor is authorized and empowered to take all actions necessary or appropriate
7 to implement the relief granted in this Order in accordance with the Motion.

END OF [PROPOSED] ORDER